



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200949052

SEP 10 2009

Uniform Issue List: 402.00-00

SE:T:EP:RA:T4

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Employer B = XXXXXXXXXXXXXXXXXXXX

Company H = XXXXXXXXXXXXXXXXXXXX

Bank F = XXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXX

Amount E = XXXXXXXXXXXXXXXXXXXX

Plan X = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Date 4 = XXXXXXXXXXXXXXXXXXXX

Date 5 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXX:

This is in response to your request dated July 3, 2009, as supplemented by correspondence dated July 9, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 47, represents that he received a distribution from Plan X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to the death of his mother during the 60-day rollover period, which affected his ability to handle his financial affairs; and impaired his ability to accomplish a timely rollover. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A represents that he was employed by Employer B and a participant in Plan X until Date 1 when his employment terminated. Taxpayer A states that he was surprised when his employment terminated and further surprised during Date 2 when a Company H representative told him that his funds in Plan X must be withdrawn and his employee account closed. Company H provides recordkeeping and administrative services for Plan X. Taxpayer A states that he intended to rollover Amount D into an IRA. Taxpayer A asserts that after he was told by his mother's doctor that she only had a few days to live, he was so devastated that on Date 3, when he received Amount E (XXXXXXXXXX less \$XXXXXXXXXX federal tax withholding) from Plan X he deposited it into his savings account until he could figure out where to deposit the funds. However, before he could decide on the financial institution, on Date 4, his terminally ill mother died just two days after he received the distribution. Taxpayer A states that he was overwhelmed by his mother's death and sank into a deep depression during his period of grieving. On Date 5, Taxpayer A went to Bank F to rollover Amount D, but was told that he was 2 weeks past the 60-day rollover period.

Documentation submitted shows that Taxpayer A's mother was terminally ill and expired during the 60-day rollover period. The effects of Taxpayer A's grief and depression restricted his ability to handle his financial matters and thus impaired his ability to complete the rollover transaction.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount D from Plan X.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than

money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, Q&A-15 of the Regulations provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the death of his mother during the 60-day rollover period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D to a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXXXX, ID Number XXXXXX at XXXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,


for Donzell H. Littlejohn, Manager,
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose